

Pre-decisional working paper

**DEPARTMENT OF HOMELAND SECURITY
AND OFFICE OF PERSONNEL
MANAGEMENT**

**HUMAN RESOURCES MANAGEMENT
SYSTEM**

DESIGN TEAM

REVIEW OF CURRENT PRACTICES

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I. Introduction

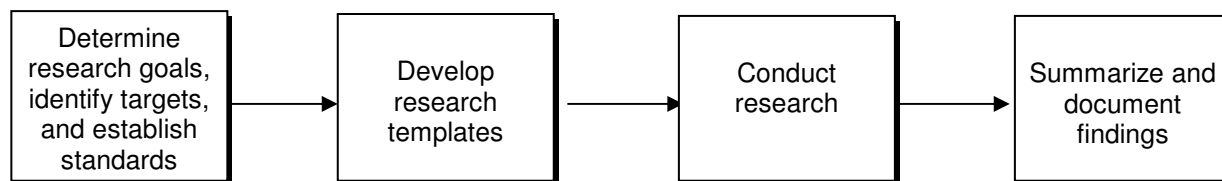
Background

This report contains a summary of the research into human resources systems conducted by the DHS/OPM HR Systems Design Team. The team focused its research on promising and successful practices in the areas of pay, performance management, classification, labor relations, adverse actions, and appeals. These are the six areas where DHS has flexibility to deviate from statutory civil service rules. The Team looked at public sector organizations at the federal, state and local level as well as from abroad, studied human resources practices and systems in private sector companies, and talked to leading experts in human resources management and non-profit organizations. The Team supplemented these sources with information gleaned from a literature review.

Through these efforts, the team gained valuable insight into human resources systems and practices that have worked well -- and not so well -- in a wide variety of organizations. Ultimately, the lessons learned through the research helped the Design Team create a broad range of options for the future DHS human resources management system.

Methodology

The following figure highlights the research approach taken by the DHS/OPM Design Team members. The Team aimed for consistency both in the way it gathered information and presented its findings.



Design Team members started by determining research goals, identifying research targets, and establishing standards for ensuring consistency in the way research was collected and documented. Based on these standards, interview questions and templates were created for each member to use as a guide for conducting research with various organizations and experts. Interview questions focused on gathering information related to the specific data necessary to inform option development.

The research targets of this effort included federal, state, and local agencies, private sector companies, and other relevant experts (e.g., academicians, luminaries). These organizations and experts were selected in order to gather information about a wide range of HR systems in federal, state, and local governments, international governments, and the private sector. The appendix to this report contains a list of organizations/individuals that were contacted. To supplement the research interviews, the Design Team conducted a literature review of professional journals, articles, and books to gain a broader perspective in the six key human resources areas.

Once the research was completed, the Design Team synthesized and recorded findings into summary research tables, which served as a valuable resource for building options. These summary tables are the focus of this report. Findings emphasized in these research summaries are aggregated from various sources and may not reflect specific comments from individual sources. Each research summary chart identifies the HR system elements that the Design Team was most interested in and the research findings for each element.

The Appendix to this report includes the list of all contacts.

Organization

The report is organized into the following sections:

- Pay Summary
- Performance Management Summary
- Classification Summary
- Labor Relations Summary
- Adverse Actions Summary
- Appeals Summary

Research Summary – Base Pay Approaches Used in Researched Systems

Base Pay System Elements		Researched Approaches
Structure of pay ranges	<ul style="list-style-type: none"> • Grouping of similar occupations in assigning pay ranges* • Job value measurement system* • Setting of pay ranges (e.g., based on labor market) • Geographic supplements? • [<i>see Classification System</i>] 	<ul style="list-style-type: none"> • System with narrow rate ranges with traditional position-based classification system as foundation; includes locality pay supplements (General Schedule (GS)) • Pay banding system with base pay ranges linked to General Schedule; also uses GS locality pay (DOD labs, IRS, Stafford Act Employees*, **) (GAO linked at GS-15/10 only but close to GS ranges elsewhere) • System that use GS grades but not GS pay ranges; expanded range widths; no steps (FDIC) • System with a grade/step structure (like GS) but with higher and broader pay ranges and more steps; includes GS locality pay (SEC) • Pay banding system with broad base pay ranges based on market analysis; but uses GS locality pay (FAA, TSA, NCUA) • Pay ranges, no steps, varying width, with locality (OCC, OTS, AUS Customs, UK Customs) • Broad pay bands based on market analysis, no locality (NCDOT, FRB, Anheuser-Busch, Union Pacific Railroad, Boeing, Verizon) • Base pay is adjusted on performance rating. (Motorola, Pepsico) *(set in 6 bands GE) • Pay range based on budget, market and union negotiation (PA.,NY.). • No pay ranges – pay set by specific formula: Normal Base Pay=Base Pay (flat rate for specific work category) + Dynamic Pay (sum of pay for each competency) (Riverside County CA) <p>* DAE employees under Stafford Act have a special schedule with 5 grades (A,B,C,D,E) and 3 steps. ** DAE employees under Stafford Act – Local employees are paid at a local rate.</p>
Adjustment of pay ranges	<ul style="list-style-type: none"> • Adjustment of pay ranges (i.e., structural adjustment)—timing and methodology (e.g., how labor market surveys are conducted and used) • Linkage to individual pay adjustments (pay progression)? 	<ul style="list-style-type: none"> • Pay range adjustments based on law; use Employment Cost Index unless President issues alternative plan or Congress enacts superseding legislation; locality adjustments made under statutory provisions, which allow for President to establish an alternative plan (GS) • Pay range adjustments based on General Schedule adjustments, including locality pay adjustments; range adjustments are linked to automatic individual pay adjustments for all (IRS, GAO, SEC) • Pay range adjustments based on General Schedule adjustments, including locality pay adjustments; pay range adjustments do not automatically result in corresponding individual pay adjustments (DOD labs) • Pay range adjustments based on market analysis but use GS locality pay; base pay range adjustments do not automatically result in corresponding individual pay adjustments (i.e., de-linked) (FAA, TSA) (FRB, UK Customs - no locality) (OCC w/separate locality) • Pay range adjustments based on market analysis and legislative adjustment broad pay band (NCDOT) • Negotiated adjustment (FDIC,PA.,NY., AUS Customs + market analysis) • Pay range adjustment based on Consumer Price Index (OTS) • Combination of annual “merit” pay and adjustment based on market survey. (Union Pacific Railroad) (*within career bands Verizon) (* for exempt employees at Anheuser-Busch) • Pay bands for non-exempt administrative employees are based on surveys of jobs within a one-hundred

Base Pay System Elements		Researched Approaches
		<p>mile radius. (Anheuser-Busch).</p> <ul style="list-style-type: none"> • Pay ranges are adjusted for market in geographic location. (Boeing) • Pay adjusted based on performance (GE) • Base Pay adjusted based on negotiated cost of living increase, Dynamic Pay adjusted based on market survey of 9 comparator counties (Riverside County CA)
Pay progression methodology	<ul style="list-style-type: none"> • Adjusting individual pay within a range (e.g., based on longevity, performance, skill acquisition, etc.) <i>[see Performance Management]</i> • Linkage to pay range adjustments? 	<ul style="list-style-type: none"> • Fixed steps within a pay range with variable waiting periods (GS,PA.NY.) • Fixed steps within a pay range with step increase decisions made every 2 years (IRS) • Fixed steps within a pay range w/merit-based increase annually (SEC) • Open range with individual adjustments based on organizational performance; some or all may get zero adjustment (TSA) • Open range with individual adjustments based on combination of organizational and individual performance; some or all may get zero adjustment (FAA, OCC) • Open range with individual adjustments based on individual performance only; some may get a zero adjustment (GAO, DOD labs, FRB, NCUA, OTS, FDIC, AUS Customs, UK Customs) • Base pay for job (one rate) with progression based on adding competencies required by the job (NCDOT, Motorola) • Base Pay adjusted based on negotiated cost of living increase, Dynamic Pay adjusted based on adding competencies used on the job including a journeyman increment and historical knowledge increment in some jobs (Riverside County CA) • Merit increases based on salary market and performance (Union Pacific Railroad) • Unions negotiate the merit pay adjustment for bargaining unit (Boeing) • Merit based for non bargaining unit (Boeing) • Based solely on performance appraisal (Verizon, Anheuser-Busch, GE) • Bonuses and merit increases are based on a formula (Pepsico)
Pay administration rules	<ul style="list-style-type: none"> • Setting pay when first hired • Setting pay upon change in level (i.e., promotion), position, geographic location, etc. • Pay reduction and pay retention • Conversion rules for movements between different systems 	<p><i>Conversion rules:</i></p> <p>Buy-out accrued GS within-grade increases with prorated base pay adjustment (IRS, GAO, FAA) (also DOD labs, but cost is funded from initial year's pay pool)</p> <p><i>Pay setting for new hires:</i></p> <ul style="list-style-type: none"> • Set at minimum unless superior qualifications (GS, FDIC, OCC, OTS, NCDOT, AUS Customs, UK Customs) • Set within portion of range unless special approval (FAA) • Set anywhere in range but limit based on current salary (TSA, SEC) • Set anywhere in range based on consideration of various factors (DOD labs)

Base Pay System Elements		Researched Approaches
		<ul style="list-style-type: none"> • GAO??? • Set between minimum and midpoint unless superior qualifications or market conditions (FRB) • Set at midpoint (market) but may be set elsewhere based on qualifications (NCUA) • Merit increase budget (Verizon, Union Pacific Railroad, Boeing) • Guidelines but not always followed (Anheuser-Busch) • Subject to negotiation (GE) • Set at “entry” rate unless full range of required competencies are demonstrated (Riverside County CA)
		<p><i>Pay reductions (within a range):</i></p> <ul style="list-style-type: none"> • No reduction of pay within a range (GS, GAO, TSA, FAA) • Pay may be reduced within a range (DOD labs-up to 5% reduction) • Dynamic pay can be lowered if employee does not possess or regularly use a competency (Riverside County CA)
		<p><i>Pay increases outside of normal pay progression (within a range):</i></p> <ul style="list-style-type: none"> • No special increases possible/longevity system • No special increases/rely on annual performance-based adjustments (DOD labs) • Special step increases (GS-Quality Step Increases) • Variable increases based on change in position, work requirement, performance, etc. (TSA & FAA-1-7% increase with limits on percentage of employees who may receive) (DOD labs-up to 5% for job change only)
Managerial compensation	<ul style="list-style-type: none"> • Special subsystem for supervisors and managers? 	<ul style="list-style-type: none"> • Separate system for all supervisors, managers, and executives • Separate system for executives but other supervisors and managers are paid under regular system (GS, IRS, FAA, TSA, GAO, FDIC, FRB, NCUA, AUS Customs, UK Customs) • Separate grades for supervisors/managers (SEC, GE) • Supervisory pay set based on subordinate pay (e.g., supervisory differentials or supplements) (DOD labs) • Most managers included in pay bands w/other employees (NCDOT, OCC, OTS) • Pay adjustments and lump sums out of salary adjustment budget (Boeing) • Managers subject to incremental step and cash awards (PA., Riverside County CA – add’l. flat rate only;)

Base Pay System Elements		Researched Approaches
Appeals	<ul style="list-style-type: none"> Employee rights of review in connection with pay decisions 	<p><i>Pay reductions:</i></p> <ul style="list-style-type: none"> Pay reductions subject to MSPB review (as well as other reviews) (GS, FAA, TSA, IRS, DOD labs) Negotiated grievance procedures (FDIC, SEC, OTS, AUS Customs) Administrative grievance procedures (FDIC, SEC, OTS) Appeal in following steps (1) supervisor, (2) department head, (3) HR, (4) neutral 3rd party selected by county and union (Riverside County CA) Pay reductions subject to internal review only (GAO, FRB, NCDOT) None (Verizon)
		<p><i>Denial of pay increases:</i></p> <ul style="list-style-type: none"> Denial of regular step increase is subject to MSPB review; but decisions to not grant special increases (QSI) based on performance are not subject to MSPB review (GS) Denial of pay increase subject to other third party review (e.g., negotiated grievance procedure) (FDIC, SEC, OTS, AUS Customs) Denial of pay increase subject to internal review only (FAA, TSA, GAO, DOD labs) Discussion with supervisor followed by appeal to agency grievance committee (NCDOT) No appeal rights negotiated (OCC, Verizon, UK Customs) Managers can discuss performance with supervisors (GE)
Evaluation	<ul style="list-style-type: none"> How is success of basic pay system evaluated? 	<ul style="list-style-type: none"> Internal board convened to review measurements (AUS Customs) Reviews by internal and external audit organizations (UK Customs) Semi-annually (more often, if needed) by IT Advisory Group (Riverside County CA)

Note: DOD labs refers to the DOD's proposed "best practices" demonstration project plan that is designed to cover projects at all DOD laboratories designated as Science and Technology Reinvention Laboratories. (See 68 FR 16120. April 2, 2003.)

Research Summary – Performance Management Approaches Used in Researched Systems

Performance Management System Elements		Researched Approaches
Purpose	<ul style="list-style-type: none"> Goals Intended uses 	<ul style="list-style-type: none"> Stated goals/uses of performance management systems: <ul style="list-style-type: none"> Link individual perf. w/organizational/strategic goals, business objectives (cascading) (GAO, IRS, FAA, TSA, FRB, OCC, OTS, BMT, AUS Customs, MRI, Verizon, Motorola, Union Pacific Railroad, NCDOT, PEPSICO, Verizon, IBM, Pierce Co.) Factor in receipt of pay adjustments, bonuses or other awards (GAO, IRS, TSA, FDIC, OCC, NCUA, MRI, BMT, JCG, AUS Customs, UK Customs, WB, Boeing, Verizon, Motorola, ATF/Demo, DoD/Proposed, NSA, GE/Mgmt, PEPSICO, King's Co., Mont. Co., Anheuser-Busch, IBM, NIST) Factor in promotion decision (GAO, IRS, TSA, MRI, BMT, JCG, DoD/Proposed, NSA, USCG*, USDS, Pepsico) <ul style="list-style-type: none"> *Rater Profiles Considered Employee development (GAO, FAA, TSA, FDIC, SEC, MRI, BMT, UK Customs, R'side Co., NM, Tacoma PEPSICO, Motorola, Pierce Co.) Increase communication (FAA, SEC, NCUA, OTS, Mont. Co., NM, Motorola) Identify poor performers (GAO, FAA, TSA, DoD/Proposed, GE/Mgmt, USCG/Enlisted, USDS, R'side Co., Tacoma) Receives an evaluation on a project basis at completion of project. (Stafford employees) Factor in RIF Decision (DoD/Proposed, NIST) Performance management system is de-linked from pay decisions (R'side Co./IT Skill Pay) Performance Based "up or out" system subject to available vacancies (USCG, USDS) Performance management system subject to collective bargaining (NYS)
Measures	<ul style="list-style-type: none"> Dimensions (results, competencies, skills, tasks) Measures for specific jobs (generic vs. specific) 	<ul style="list-style-type: none"> Performance plans combine a focus on organizational goals with individual commitments (GAO, IRS, FAA, TSA, NSA, Motorola, Boeing, Verizon) <ul style="list-style-type: none"> IRS combines individual commitments and balanced measures (which include business results). Performance plans are generic which can be individualized. (GAO, IRS, FAA, TSA, OCC, FRB, OTS, SEC; by occupation – FDIC, NCUA, NSA) Performance plans are: <ul style="list-style-type: none"> Competency based (GAO, IRS*, MRI, Anheuser-Busch, Mont. Co., NM, NCDOT, Verizon*) Outcome/Results based (IRS*, FAA**, TSA, MRI, AUS Customs, UK Customs, NSA, PEPSICO***, Boeing, Verizon*, Pierce Co.) <ul style="list-style-type: none"> *IRS and Verizon use a combination of competencies and results **FAA has bargaining unit reps. on team developing generic plans ***PEPSICO incorporates both business and people results Market based (BMT) Personal attributes (JCG) Developmental Objectives (UK Customs)

Performance Management System Elements		Researched Approaches
		<ul style="list-style-type: none"> • Performance goals and measures determined by top level management (GE/Mgnt) ▶ Generic measures w limited or no flexibility (Phila., USCG, USDS) ▶ Measures vary by employee group (R'side Co.) ▶ No required measures (Tacoma) ▶ Employees submit list of accomplishments (NIST)
Appraisal	<ul style="list-style-type: none"> • Rating levels • What is rated? (e.g., elements, overall performance?) • Who provides input into the appraisal? (e.g., 360° approach?) • Who assigns rating? (e.g., supervisor or panel) • Process 	<ul style="list-style-type: none"> ▶ Rating Patterns: <ul style="list-style-type: none"> • Two Level (TSA, FDIC, SEC, Motorola, FBI, Phila./BC&Police, Kings Co., NIST* <ul style="list-style-type: none"> ◦ *NIST uses 100 point scoring scale: 0 to 39 = “unsatisfactory,” 40 to 100 = “eligible” • Three Level (NCDOT, Motorola) • Four Level (, IRS*, WB, OCC, AUS Customs, UK Customs, NM, Anheuser-Busch, Motorola) <ul style="list-style-type: none"> *IRS uses a pass/fail retention standard prior to assigning a summary rating • Five Level (FRB, OTS, NCUA, Boeing, Phila./WC, PA, NM, PEPSICO, Boeing) • No summary rating but narrative assessment provided (FAA, GAO, Pierce Co.) ▶ Overall performance is rated (GAO*, IRS, FAA, TSA, FDIC, OCC, OTS, AUS Customs) <ul style="list-style-type: none"> *GAO rates on overall perf. Based on individual competencies ▶ Input into ratings: <ul style="list-style-type: none"> • Employee (FAA, GAO, WB, Motorola, ATF/Demo) • Coach (WB) • Customer (WB) • 270 degree (Motorola) • 360 degrees (FRA, BMT, PEPSICO) ▶ Ratings are assigned by: <ul style="list-style-type: none"> • 1st level Supv. (IRS, FAA, TSA, FDIC, FRB, OCC, OTS, WB, Anheuser-Busch, Motorola, AUS Customs, Boeing) • Designated Perf. Manager (GAO – to address multiple supervisors) ▶ Ratings reviewed by higher levels to ensure consistency: <ul style="list-style-type: none"> • Higher level supervisory review (GAO, FRB, FDIC, OCC, WB, AUS Customs) • Panel Review (ATF/Demo) • Multiple levels of review (NSA,PEPSICO) ▶ Rating control mechanisms <ul style="list-style-type: none"> • Use of “Point Budget” to assist control ratings (IRS) • Forced distribution (IBM, GE/Mgnt.) • Retention Review Board (USDS) • Ranking – relative performance/contribution, calibration of ratings (Motorola,) <p>100 point scoring scale: 0 to 39 = “unsatisfactory,” 40 to 100 = “eligible” (NIST)</p>

Performance Management System Elements	Researched Approaches
<p>Communication vehicles</p> <ul style="list-style-type: none"> • Performance plan or contract • Feedback mechanism 	<ul style="list-style-type: none"> ▶ Uses performance plans discussed with employee at beginning of appraisal period (GAO, IRS, FAA, TSA, FDIC, FRB, SEC, OCC, NCUA, OTS, AUS Customs, UK Customs, Mont. Co, Anheuser-Busch, PEPSICO, Motorola, Boeing.) ▶ Outlines annual review with at least one interim review (GAO, IRS, FAA, TSA, FDIC, FRB, SEC, OCC, NCUA, OTS, WB*, Boeing, AUD Customs, UK Customs) <ul style="list-style-type: none"> • Probationary employees evaluated more frequently ▶ Mandates reviews four times a year (MRI) ▶ Mandates two reviews plus final appraisal (Motorola) ▶ Mandates reviews biannually. (Union Pacific Railroad) ▶ Continuous feedback during appraisal period (GE/Mgmt, NM, NCDOT, PEPSICO, Boeing, Pierce Co.) ▶ No mandated communications (Phila.) ▶ Documented verbal conferences (R'side Co.) ▶ Behavior/competency written feedback (USCG)
<p>Appeals</p> <ul style="list-style-type: none"> • Employee rights of review in connection with performance appraisals 	<ul style="list-style-type: none"> ▶ Administrative grievance process (FDIC, FRB, SEC, OCC, NCUA, OTS, Motorola, R'side Co.) ▶ Negotiated grievance process (FDIC, SEC, OTS, UK Customs, R'side Co., Pierce Co.) ▶ Appeal of adverse action to MSPB (TSA – Does not apply to Screeners) ▶ Employee Advisory Council to seek views and concerns (GAO) ▶ Appeals heard by internal (i) or external (e) independent board or tribunal (GAO-e, WB-i, AUS Customs-i, USCG-I, NM-I, NCDOT-i) ▶ Judicial review in lieu of MSPB (GAO) ▶ Expedited appeal process to fit salary review (IRS) ▶ Appeal performance based actions such as removal or demotion (FAA) ▶ Grieve unsatisfactory rating but not substance of elements, standards or reviews (TSA) ▶ Alternative Dispute Resolution (Boeing) ▶ None (Verizon, PEPSICO) ▶ Appeals to CSC only and limited to lowest ratings in scale (Phila.) ▶ Appeals up the chain of command to CEO – company tradition (Motorola)
<p>Evaluation</p> <ul style="list-style-type: none"> • How is success of performance management system evaluated? 	<ul style="list-style-type: none"> ▶ Annual evaluation with assistance of contractor (GAO) ▶ Employees may provide anonymous feedback through automated system (FAA) ▶ HR does post audit reviews to ensure appropriate and strategic use of pay adjustments, and for adverse impact (Boeing, Motorola) ▶ Internal local board convened to review rating system (AUS Customs) ▶ Varies by system (R'side Co.)

Master Summary - Classification Approaches Used in Researched Systems

Classification System Elements		Researched Approaches
Functions	<ul style="list-style-type: none"> * Formal purposes (e.g., for setting pay, workforce planning) * Informal uses within organizational culture 	<ul style="list-style-type: none"> * Position classification linked to other HR elements such as: career planning, appointment, promotion and transfer, mobility, EEO programs, pay, performance appraisal, managing underperformance, and training. (AUS Customs; FAA; FRB; OCC; UK Customs; NCDOT; GE; St. Paul MN; World Bank; UK Customs; Boys and Girls Clubs) * Adjusting base pay, bonuses, promotion, equity increases. (PepsiCo) * Simple and efficient administration and relates pay to market. (Boeing; Verizon) * Initially to place the jobs into a band and range. (Union Pacific Railroad; UK Customs) * Classification used to slot current jobs into pay band. (GAO; IRS; FAA; TSA; Philadelphia, PA) * Under new system of broad categories, business case, not classification, will drive pay. (WA State) * Stafford Act employees: CORE and DTE employees have classified position descriptions. * * DAE employees under the Stafford Act - DAE Reserve and Local are hired based on skills needed.
Categorization of type of work	<ul style="list-style-type: none"> * Occupations (series) * Grouping of similar occupations into job families (which may relate to assigning of pay ranges) <p>[see Base Pay System]</p>	<ul style="list-style-type: none"> * Few occupations and job families, with different levels of one job/role (e.g., entry, journey and senior) in a broad classification band. (NCDOT) * Work is divided into employment groups, the occupants of which perform similar types of work. Work is described at the various levels within an employment group according to accepted work value criteria. (AUS Customs; UK Customs) * Jobs grouped into career ladders or occupations with two or more levels. (FRB; NCUA) * GS occupations and qualifications but separate broad band levels. (OCC; OTS) * 9 job categories, including one "specialized" category with 11 specialized occupations. (FAA) * Career Bands broken into Career Paths for different clusters of jobs (clustering based on market similarity). (Verizon) * Occupational categories divided into job families with general descriptions of job levels within each family. (Boeing 41 occupational categories and 270 job families) * Offer both management and technical tracks. (Anheuser-Busch) * Limited number of job families (10-20) established which are linked to specific career path (i.e., level and pay ranges); grouping of jobs into families based on market and job analysis. (TSA; FAA; Philadelphia, PA) * Jobs aggregated into "functional groups" or families, e.g., law enforcement, which are further divided into subgroups such as intelligence, detection, investigation. (UK Customs) * Uses current GS series. (IRS) * The State has 3807 classifications for 150,000 positions (about 40 jobs for each classification. (NY State) * 10 performance job families. (GAO) * City has 3,200 positions in 600 job classes. (St. Paul, MN) * Groups jobs into a few broad categories. (GE; King County, WA) * By occupation - has about 600 (Pierce County, WA) * Reduced from 62 pay levels and thousands of PDs to 10 pay bands and 24 job families. (IBM)

Classification System Elements		Researched Approaches
		<ul style="list-style-type: none"> * In 1998, collapsed 21 grades to 11. Jobs are grouped in "job streams" with generic descriptions at each grade level. (World Bank) * 5 career groups and 3 to 4 levels for each group. (NSA) * 2,800 job descriptions for 80,000 employees. (PA State) * Consolidated 117 IT job classes into 10 "job concepts. (Riverside, CA) * Core competencies in five job classes were defined for organization's 100 to 150 jobs. (Boys and Girls Clubs) * 1,500 job classification titles. Brief job descriptions (3 to 6 sentences). (Anheuser-Busch) * Demos replaced GS system with a reduced number of occupational families. (DOD)
Work valuation method	<ul style="list-style-type: none"> * Job value measurement system (factors, weights, occupational standards, functional guides, etc.) * Definition of levels of work (includes qualifications) <p>[see Base Pay System]</p>	<ul style="list-style-type: none"> * GS classification scheme. (FDIC; SEC; IRS) * Built on GS classification system but with 2 additional grades for supervisors. (SEC) * Uses OPM's series definitions. Groupings based on analysis of job similarities and market data. (FAA) * Based on competencies required to successfully perform in the position/job/role, i.e., knowledge, skills, abilities and attributes. (NCDOT, GAO, IGO-Norway) * Work is evaluated against small number of criteria. Each criterion is defined at several levels. Work standards may supplement these definitions. (AUS Customs; UK Customs; IGO-Netherlands) * Computer-based job evaluation system used to place a role profile or job in the proper band or grade. Elements against which job is evaluated are: (1) contacts and communications; (2) training, experience, and applied skills; (3) problem-solving and initiative; (4) managing the business; (5) autonomy; and (6) decision-making and impact on results. (UK Customs) * Unique purpose built point factor system. (FRB; OTS) * Factor comparison system with defined levels for each factor. (OCC) * Combination of unique point factor system and GS classification standards. (NCUA) * Market (boundaries set within Career Bands are based on the market rather than job evaluation, personal competencies, etc.-- Verizon) (and strategic value of position/employee - Hampton); (Riverside, CA) * Job families are used to map Boeing job market survey. (Boeing) * Hay system, a factor/point based system much like the current Federal FES. (Union Pacific Railroad; Philadelphia, PA; St. Paul, MN; PepsiCo) * Assigning band (i.e., pay range) to various levels of work for a job family is based primarily on market analysis; levels of work are defined by career level definitions that rely on generic factors. (FAA; TSA) * Generic job classifications based on academic, experience requirements. (IGO-UK; IGO-Japan) * National firm analyses competencies for comparables jobs internally and with other non-profits. (Boys and Girls Clubs)
Qualifications	* Knowledge, skills, and ability to perform the work at a level	* Career path, in a broad classification band system, often is progression in a career band without further competition; movement to another occupation or different job/role is competitive. (NCDOT; FRB; OCC)

Classification System Elements		Researched Approaches
	<ul style="list-style-type: none"> * Career path (promotion patterns) 	<ul style="list-style-type: none"> * Degree of skill and knowledge required varies according to the range and level of work undertaken. (AUS Customs; UK Customs) * Movement from one broadband to another (i.e., a promotion) is competitive. (AUS Customs) * Based on knowledge, skills and abilities and performance. (NCUA; OTS; Philadelphia, PA; St. Paul, MN; UK Customs; Pierce County, WA; Riverside, CA) * Use competencies for all selections. (Union Pacific Railroad) * No time-in-grade/band requirement for promotion. (FAA; TSA) * Qualifications for pay band are the qualifications for the lowest grade incorporated into the band; advancement based on performance. (IRS) * All movement from one level to another requires a written test. (NY State)
Applying system	<ul style="list-style-type: none"> * Process * Sources of information (e.g., position descriptions or other documentation of position responsibilities) * Who applies? Role of manager vs. HR office 	<ul style="list-style-type: none"> * Competencies, developed from position/role description written by supervisor, are compared by HR staff against a guide or standard to determine the proper career band. (NCDOT) * Supervisors and managers develop new job descriptions for classification. A position is classified or reclassified by the human resources staff, based on information provided in the position description, supplied by the employee and shared by the supervisor. (AUS Customs; FRB; NCUA; OTS; UK Customs) * Highly centralized system controlled by senior HR staff. (OCC; Philadelphia, PA; St. Paul, MN) * Used job codes. HR determines job classification. (Boeing) * No position descriptions; specific work requirements are in the individual performance plan. (FAA; TSA) * Manager responsible. Consults with HR. HR can object to manager's classification and refer matter to higher levels, including FAA Compensation Committee. (FAA) * Job classified to series and grade, then slotted into pay band. (IRS) * Human Capital Office applies. (GAO) * Job analysis done by employee, manager, and HR analyst, and then scored by computer model. New role profiles, changes to existing profiles, or "upbanding"/upgrading must be agreed to by union. (UK Customs) * By HR with manager (Pierce County, WA) * Highly decentralized (PA State; Riverside, CA)
Appeals	<ul style="list-style-type: none"> * Employee rights of review in connection with classification decisions 	<ul style="list-style-type: none"> * Disagreements about the proper career band for a job are resolved by a discussion between the supervisor and HR staff. (NCDOT) * Bargaining unit employees use the negotiated dispute mediation arrangements. (AUS Customs) * Issues not covered by the agreement can be reviewed in accordance with the Customs Procedures for Review of Actions, which is consistent with the APS legislative framework. If unresolved after such review, the employee may request a secondary review by the Merit Protection Commissioner. The Chief Executive Officer will decide the matter after considering the recommendations of the Merit Protection Commissioner. (AUS Customs) * Request to reconsider can only be filed by Division Director. (FRB) * Appeals are resolved through internal review by HR staff. (FDIC; Riverside, CA)

Classification System Elements		Researched Approaches
		<ul style="list-style-type: none"> * May appeal inside agency. May appeal to OPM. (IRS) * May grieve. (NCUA) * Appeals to HR with final appeal to organizational executive. (OCC) * Appeals to HR with final appeal to Position Evaluation Appeal Committee. (OTS) * No formal classification appeals process but employee generally may file grievance regarding application of system to assign occupation and band level. (FAA; TSA; UK Customs) * Employee can appeal through management chain to the Human Capital Office and if not satisfied, can grieve. (GAO) * Employee may ask for reclassification. (NY State) * ADR process to resolve disputes. (Boeing) * Review by joint labor/management committee. If cannot agree, final decision by Civil Service Commission. (Philadelphia, PA) * Discuss with supervisor. (GE) * All appeals are internal. Includes conversations with HR or 1st or 2nd level supervisor, intervention by ombudsman, formal mediation, formal administrative review, and appeals to an independent body called the "tribunal." (World Bank) * If discussions cannot resolve disagreement about the outcome of the job evaluation, internal grievance and appeals procedure may be use. (UK Customs) * No appeal system. (Stafford employees)
Evaluation	* How is success of classification system evaluated?	<ul style="list-style-type: none"> * Reviews the application of the work level standards (position classification standards), as well as some allowances are provided for in the agreement. (AUS Customs, UK Customs) * No evaluation process in place. (TSA; IRS) * No evaluative information available. (Philadelphia, PA) * System still under development; no evaluation yet. (NCDOT) * Annual evaluation. (GAO) * By city classifier. (St. Paul, MN) * Grading system reviewed every two years. Periodic equal pay reviews look at the job evaluation system and resulting grading structure in terms of job relativities. Results of reviews show the system is robust, produces an auditable outcome, and reflects job complexities. (UK Customs) * System reviewed at least twice a year by IT Advisory Group. Individual pay reviewed yearly. (Riverside, CA)

Master Summary – Labor Relations Approaches Used in Researched Systems

Labor Relations System Elements		Researched Approaches
Administration	<ul style="list-style-type: none"> • Composition • Administration and enforcement of labor relations program • Investigation and prosecution of unfair labor practices (ULPs) • Determination of appropriate units • Resolution of negotiability issues • Conduct of elections • Resolution of exceptions to arbitration awards • Resolution of bargaining impasses 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Dispute Resolution Initiated By Employee, (Office of Compliance, Congressional Accountability) • ADR by Executive Director, (Office of Compliance, Congressional Accountability) • Enforced By General Counsel, (Office of Compliance, Congressional Accountability) • TVA is a governmental organization; 10,000 of 13,000 employees covered by negotiated agreements. • FRB is a federal board and not unionized; excepted service; only veterans can appeal actions to MSPB; ER procedures parallel government regulations. • Multi-member Board, appointed by Executive with confirmation by Legislature- CA, FL, IL, NJ, NY, OH, PA, WA • MWAA's board is chosen jointly by the parties. • Individual- Montgomery County (Appointed by County Executive from among names submitted by Parties) Texas (Police & FF) has no administrative authority • Texas (Police & FF) has no administrative authority <p>Key Expert Opinions</p> <ul style="list-style-type: none"> • None
Employee Rights	<ul style="list-style-type: none"> • Extent of involvement • Refrain from involvement 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Employees can file with Office or District Court, (Office of Compliance, Congressional Accountability) • State statutes provide employees with right to form, join and participate in employee organizations and bargain collectively, and to refrain from such activity, except City of Alexandria, VA, Georgia, South Carolina, Texas (State employees) • Texas (Police and FF) contains no statement on employee rights <p>Key Expert Findings</p> <ul style="list-style-type: none"> • Managers feel that while employees should have input into DHS, the current bargaining process breeds mistrust. (5 DHS/CBP Managers)
Union Rights and Obligations	<ul style="list-style-type: none"> • Definition of labor organization • Standards of conduct • Exclusive representative • Duty of fair representation 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Managers felt that employees should be part of the process, but were not always helpful. (5 DHS/CBP Managers) • Union official stated that the partnership had worked. (5 DHS/CBP Managers).

Labor Relations System Elements	Researched Approaches
<ul style="list-style-type: none"> • Negotiate contracts • Formal discussions • Weingarten • Access to Information 	<ul style="list-style-type: none"> • State and Local Government statutes provide that organizations selected by the employees are the exclusive representative and must represent all employees in the bargaining unit. (CA, IL, MWAA, Montgomery County, NJ, WI) • The New York statute provides that unions certified as exclusive representative have the right to represent employees in negotiations and the settlement of grievances, and have dues and agency fee deduction. <p>Key Expert Findings</p> <ul style="list-style-type: none"> • None
<p>Management Rights</p> <ul style="list-style-type: none"> • Determine mission, budget, organization, number of employees, internal security practices • Hire and manage employees 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Many of the statutes have specified management rights provisions. These are similar to those in 5 USC Chapter 71. (IL, OH, PA, WI) • Montgomery County, MD has a broader management rights clause than 5 USC Chapter 71. • The MWAA has a management rights clause identical to Chapter 71 by extension, since collective bargaining must continue “to the extent that such rights were enjoyed before the transfer of National and Dulles [Airports] to the Authority.” • The California statute contains a provision authorizing the employer in the event of an emergency to implement a law, rule, resolution, or regulation immediately without prior notice or meeting with a recognized employee organization. • Several of the states have no specified management rights provisions. FL, NY, TX (Police & FF) <p>Key Expert Findings</p> <ul style="list-style-type: none"> • In the private sector everything is negotiable, including management rights. (Hockenberry) • LEOs should be exempt if national security would be compromised. (5 DHS/CBP Managers)
<p>Bargaining Unit</p> <ul style="list-style-type: none"> • Inclusions/exclusions • Appropriate unit • Election and certification/decertification procedure 	<p>Key Findings</p> <ul style="list-style-type: none"> • Managers felt that low membership was not a problem. (5 DHS/CBP Managers) • TVA has four white collar unions and six blue collar unions; the Law Enforcement Assoc. represents law enforcement employees. Involvement of persons external to TVA is limited to union representatives. • <u>COAST GUARD NON APPROPRIATED FUND EMPLOYEES (CG NAF)</u> – Employees are covered under 5 USC Chapter 71. CG has about 2580 NAF employees. The vast majority work as sales clerks in base exchanges, clubs and bowling alleys across the country. There are 4 bargaining units -two with contracts; two without. Only UFCWU is

Labor Relations System Elements	Researched Approaches
	<p>actively engaged with management. Issues such as pay leave accrual and administration, retirement and health benefits are negotiable and have been bargained by ATC and UFCWU.</p> <ul style="list-style-type: none"> • NATIONAL GUARD BUREAU (NGB) - Employees are covered under 5 USC Chapter 71. NGB workforce includes approximately 51,000 military technicians and 1,950 civilian technicians. Military technicians while working their Monday-Friday, full-time jobs are covered by Title 32. However, while on military duty on weekends, they are subject to military rules. The 1,950 civilian technicians (also called non-dual status technicians) largely do clerical work and are also covered by Chapter 32. Title 32 prescribes adherence to Title 5, Chapters 43 and 75 with an appeal exception. • NSA - Exempted from coverage of 5 USC Chapter 71. It does not have a unionized workforce. • DIA – Exempted from coverage of 5 USC Chapter 71. • NIMA - The Director of NIMA under authority of 10 USC 461 ©, decided that all agency positions including those in established bargaining units had changed to include intelligence-related duties that directly affected national security. Accordingly, all NIMA positions were excluded from collective bargaining units and ceased to be entitled to exclusive representation by a labor organization. • Collective bargaining does not apply to employees of these state and local governments: City of Alexandria, VA, Georgia, South Carolina, Texas (State employees) • Most of the statutes reviewed call for bargaining units to be determined by the appropriate administrative agency. • CA, FL, IL, MWAA, NJ, NY, OH, PA. • New York allows parties to establish their own procedures to determine bargaining units. If they are unable to agree, the state administrative agency will decide. • The Texas Police and Fire Fighter statute requires separate bargaining units for police and fire departments. • The statutes for Montgomery County, MD and Wisconsin specify the bargaining units. • The statutes for Illinois, New Jersey, New York and Pennsylvania allow public employers to grant exclusive recognition based on a submission of employee authorizations, without a secret ballot election. If the employer refuses to grant voluntary recognition, the employee organization may petition the administrative agency for a secret ballot election of employees. All other statutes reviewed only allow recognition to be granted based on secret ballot election. <p>Key Expert Findings</p> <ul style="list-style-type: none"> • None

Labor Relations System Elements	Researched Approaches
<p>Negotiations</p> <ul style="list-style-type: none"> • Good faith bargaining • Duty to bargain • Scope of bargaining – mandatory, permissive, prohibited, substance, I&I • Contract negotiations - agency head review, negotiated grievance procedure/arbitration • Midterm negotiations • Resolution of negotiability issues • Mediation (FMCS or other mediator) • Resolution of bargaining disputes • National consultation rights 	<p>Key Findings</p> <ul style="list-style-type: none"> • Managers feel that the current issues are too broad and ill defined. The union stated that it is sufficient if management were held accountable. (5 DHS/CBP Managers). • Pay, Leave accrual and administration, retirement and health benefits are negotiable, (CG-NAF). • All of the reviewed statutes of state and local governments, require both parties to negotiate in good faith. • The Texas Police and Fire Fighter statute requires that negotiations sessions be open to the public. • In most of the reviewed statutes of state and local governments, the scope of bargaining includes “wages, hours, and other terms and conditions of employment. (CA, FL, IL, NY, OH, PA, TX Police & Fire Fighters, WI) • The scope of bargaining in the NJ statute includes grievance procedures and other conditions of employment. Standards or criteria for employee performance are excluded from the scope of bargaining. • The statute for the MWAA provides that the scope of bargaining will be the same as existed before the transfer of the airports from the federal government. This is the scope of bargaining in 5 USC Chapter 71. • The Wisconsin statute lists as matters subject to bargaining wages, a number of related economic matters, hours, and conditions of employment. But, in addition to the management rights clause, the statute includes a lengthy list of subjects over which “the employer is prohibited from bargaining on.” Some of these are similar to items excluded from the scope of bargaining in 5 USC, Chapter 71 (i.e., appointments, and examinations), several others are aspects of the health benefits program. • Despite its management rights clause, the Illinois statute requires employers to bargain with regard to policy matters “directly affecting wages, hours and terms and conditions of employment as well as the impact thereon.” • The statute for Montgomery County, MD requires bargaining on amelioration of the effects on employees when the exercise of management rights “causes a loss of existing jobs in the unit.” • None of the reviewed statutes of state and local governments provide for agency head review of collective bargaining agreements, as contained in 5 USC Chapter 71. • The statute for Florida requires that agreements must be ratified by the employer. • The Wisconsin statute requires that contracts be approved by the Legislature’s Joint Committee on Employment Relations and then the entire Legislature. Contracts that are not approved are returned to the parties for further negotiations. • The statute for Montgomery County, MD provides that any contract provision that requires

Labor Relations System Elements	Researched Approaches
	<p>an appropriation of funds must be approved by the County Council.</p> <ul style="list-style-type: none"> • The statute for Ohio requires that contracts be ratified by three-fifths of the appropriate legislative body. • Several of the reviewed statutes of state and local governments require contracts to contain negotiated grievance procedures with arbitration. (FL, IL, PA, NJ) • Statutes for New York and Wisconsin assume that contracts will contain negotiated grievance procedures with arbitration. • The statute for Montgomery County, MD includes in its scope of bargaining grievance procedures with arbitration. • The reviewed statutes of state and local governments make no mention of midterm negotiations. • Of the reviewed statutes, of state and local governments, only the statute for the MWAA contains any specific negotiability dispute resolution procedures. Under the other statutes, such disputes would either be resolved through unfair labor practice or impasse resolution procedures. • All the reviewed statutes of state and local governments make provisions for the resolution of impasses. Most of the statutes provide for mediation, through the appropriate administrative agency. CA, FL, IL, NJ, NY, OH, PA, TX Police & Fire Fighters, WI. • The statute for the MWAA provides for mediation by the Impasses Panel created by the parties. • The Montgomery County, MD statute provides that the Labor Relations Administrator may appoint a mediator/arbitrator whose services will be paid for by the parties. • Several of the reviewed statutes of state and local governments, provide fact-finding with recommendations. FL, IL, NY, OH, PA, WI • The statute for Montgomery County, MD requires that all impasses be settled by a mediator/arbitrator, appointed by the Labor Relations Administrator. • Several of the reviewed statutes of state and local governments allow parties to resolve impasses that remain after mediation and/or fact finding by binding arbitration. NJ, NY, OH, PA, TX Police and Fire Fighters, • Several of the reviewed statutes of state and local governments require that impasses for police or fire fighter bargaining units be resolved by binding arbitration if mediation and/or fact-finding fails to resolve them. Illinois and New York use tri-partite panels. New Jersey and Ohio use a single arbitrator. • The statute for Pennsylvania requires that impasses for bargaining units including prison guards or mental hospitals be resolved by tri-partite arbitration panels. • The statute for Ohio allows most public employees the right to strike. The statute for

Labor Relations System Elements		Researched Approaches
		<p>Pennsylvania allows all public employees except for prison guards and employees of mental hospitals the right to strike. [Police and fire fighters are covered by a separate statute which does not allow for strikes.]</p> <p>Key Expert Findings</p> <ul style="list-style-type: none"> • None
Unfair Labor Practices	<ul style="list-style-type: none"> • Coverage (who can file and upon what basis) • Procedure and timeframes • Resolution of unfair labor practices • Judicial review • Judicial enforcement 	<p>Key Findings</p> <ul style="list-style-type: none"> • Most state/local jurisdictions have ULP processes similar to the federal sector process - 1) charge is reviewed by investigative arm of a labor relations board; 2) if probable cause (or a similar standard) is found, a complaint is issued; 3) settlement is attempted; 4) if no settlement is achieved, a hearing officer or an ALJ conducts a hearing; 5) hearing officer/ALJ issues recommended decision which becomes final if exceptions are not filed; 6) if exceptions are filed, state board (or similar authority) issues a precedential decision; and 7) decisions are appealable and enforced by state courts. • Striking is not a ULP but a separate violation of law. Penalty is loss of pay not removal (NY). • Charging party, not the board issuing the complaint, prosecutes the charge at the hearing (PA). • Unlike federal sector process, dismissal of charge is appealable to the state board (IL). • ULP process also resolves negotiability disputes (MontCo). • Local board in Chicago performs same functions as state board (IL). <p>Key Expert Findings</p> <ul style="list-style-type: none"> • “One stop shopping” is recommended – have a single process and entity for adjudicating ULPs, negotiability disputes, and impasses (Swerdzewski). • Don’t use FLRA General Counsel concept – unions should represent themselves (Swerdzewski). • Use arbitrators instead of ALJs (Swerdzewski).
Grievance - Arbitration	<ul style="list-style-type: none"> • Required in contract • Scope and exclusions • Exceptions to arbitration awards 	<p>Key Findings</p> <ul style="list-style-type: none"> • Most state/local procedures contain 1 or 2-step in-house process with binding arbitration either required by statute or negotiated into the agreement. May require mediation or other ADR step between final decision and arbitration. Arbitration costs are shared equally except for “loser pays” provision in MontCo. Arbitration decisions are generally not appealable except for egregious violations of law. • State labor board appoints fact-finder who makes recommended decision that is appealable to the labor board (WI).

Labor Relations System Elements		Researched Approaches
		<ul style="list-style-type: none"> MWAA was the only reviewed organization with collective bargaining but no binding arbitration. Tripartite arbitration panels are used for police officials and firefighters (NY). Certified unions are not required to process grievances for non-members (IL). <p>Key Expert Findings</p> <ul style="list-style-type: none"> In the private sector, arbitration decisions are “final and binding” and appeals are rare (Hockenberry). In-house appeals panel should be sole option for both unit and non-unit employees (Broida). Retain binding arbitration for grievances (Nesterczuk).
Dues Allotment	<ul style="list-style-type: none"> Cost Termination 	<p>Key Findings</p> <ul style="list-style-type: none"> None of the state/local jurisdictions reported a cost to the union for member dues allotment. Exclusive representatives have the right to collect dues through payroll deductions. Union may impose service fees equivalent to dues or cost of membership to non-members (IL, NJ, NY, OH, WI, MontCo). WI has 2-tiered union security options. Both require a referendum indicating that at least 30% of eligible employees support the union. “Fair share” agreements require that all employees pay if agreed upon by 2/3s of eligible employees. “Maintenance of membership” requires that all who pay at time of agreement and subsequent new hires shall continue to pay dues for the duration of the agreement if agreed upon by a simple majority. Right to work state but employee organizations with a minimum of 4,000 members may collect dues by payroll deduction (TX). Collective bargaining state but dues are voluntary and revocable upon 30-day notice (FL). Dues are voluntary (MWAA). <p>Key Expert Findings</p> <ul style="list-style-type: none"> None
Official Time	<ul style="list-style-type: none"> Authorized Negotiated 	<p>Key Findings</p> <ul style="list-style-type: none"> Most state/local jurisdictions allow “reasonable” official time for employees and their representatives to investigate, prepare, and present grievances, and to attend meetings related to grievances and arbitrations (IL, NJ, OH, PA). Individual state agencies may choose to recognize unions and negotiate for official time (TX).

Labor Relations System Elements		Researched Approaches
		<ul style="list-style-type: none"> Reasonable time off is given when meeting or conferring with agency representatives on matters within the scope of representation (NY). Official time is not provided by statute but may be negotiated (FL, NY). 2 employees are granted official time for negotiations. Labor contracts provide “reasonable” time for union activities (MWAA). <p>Key Expert Findings</p> <ul style="list-style-type: none"> Unions should only represent those who choose to pay dues (Nesterczuk). Official time is major cost to government and not an efficient expenditure of funds (Swerdzewski). Unions are underfunded due to low membership and depend upon official time subsidy (Swerdzewski). Official time makes unions ineffective. In the private sector, only a few employees receive modest amounts of official time (Swerdzewski). Official time results in numerous disputes which sometimes prevents the parties from coming to agreement on other issues (Schimansky). DHS should consider a system under which employees pay a fee for union service or a system that allows union representatives to work part-time for their agency and part-time for their union (Schimansky).
Evaluation	<ul style="list-style-type: none"> How is success of labor relations program evaluated? 	<p>Key Findings</p> <ul style="list-style-type: none"> Only NY reported an evaluation program built into its procedures. <p>Key Expert Findings</p> <ul style="list-style-type: none"> None

LITERATURE REVIEW

Key Findings

Public Sector – Collaboration/Partnership

Federal –

- Generally, articles addressed labor-management collaboration/partnership in positive terms and provided similar ideas on what made for successful experiences.
- 1998 – 59% of federal workforce represented by unions; 17.2% were dues payers. Results of partnership (impact of EO 12871) in the federal sector were mixed. Management felt forced to develop partnerships without an adequate labor-management foundation. Also, rather than focusing on organizational performance, many partnerships focused on traditional issues such as physical work environment, health and safety, family-friendly workplace policies. However, positive outcomes were decrease in litigation and conflict and associated cost savings. Forms of partnership included labor-management committees, interest-based bargaining (IBB.)
- FMCS involvement with facilitating collaborative labor-management efforts - IBB, Modified Traditional Bargaining and Enhanced Cooperative Negotiations. Important to recognize that such efforts are not suitable for all labor management relationships... both parties must be sufficiently committed and trusting, and the issues must lend themselves to cooperative resolution.
- Traditional collective bargaining will continue to exist side-by-side with nontraditional approaches. Engagement strategy should fit the situation at hand. Determine strategy based on external environmental factors, organizational considerations including cultural and structural considerations, historical LR relationship, and nature of the issue.

State/Local -

- Generally, positive experiences with collaboration/partnership in Ft. Lauderdale, Illinois, Wisconsin, Minnesota, Phoenix, Connecticut, Ohio, Maine, and Seattle. Use of IBB, joint committees, etc.
- Many successful collaborative efforts were those that focused on improved service quality and productivity rather than general workplace matters. For example, in Seattle the use of city-wide structure for establishing Employee Involvement Committees resulted in numerous accomplishments ranging from reduction in city's electric utility inventory (one-time savings of \$300,000) to parks department deployment of a more efficient means of hauling away recyclable wood products (savings of \$30,000 annually). The aim of the EIC was to save costs and improve service.

Private Sector – Collaboration/Partnership -

- Roughly ½ of unionized manufacturing plants in U.S. have embarked on formalized collaborative LR activities (from 1991 article) with good results. One element of long-term successful LR collaboration is establishment of triggers and procedures for handling serious problems regarding those collaborative efforts.
- Harley Davidson, Ford Motor Company – successful collaborative efforts. Harley Davison focus on production and customers – ensure employees have capability to work with rapid, effective change based on understanding of whole business environment.

General - Collaboration/Partnership -

- Positive discussions on (1) communication, information-sharing, training, etc., (2) procedures/structure and (3) focus, i.e., production/customer and working conditions.

NOTE: 2 experts provided similar additional comments which do not precisely fit into the system elements but are worthy of mention. The comments are 1) LR program should be mission-focused and responsive to a national security environment; and 2) LR program needs to be able to quickly resolve issues (Nesterczuk, Swerdzewski)

Master Summary – Adverse Actions Approaches Used in Researched Systems

Adverse Actions System Elements		Researched Approaches
Coverage	<ul style="list-style-type: none"> • Employees • Actions • Trial/Probationary Periods 	<ul style="list-style-type: none"> • Most entities (Alex, CA, FL, GA, ILL, MontCo, NJ, OH, PA, WA) distinguish between various groups of employees using terms such as classified, unclassified, certified, civil service, career, regular, confidential, exempt, permanent and probationary employees. These distinctions provide the basis for differing entitlements to adverse action due process coverage. • Generally, most entities (Alex, FLA, GA, ILL, NJ, OH, PA, TX, WA) use adverse actions such as reprimands (oral and written), suspensions, demotions and removals. NJ also uses employer-employee sanctioned fines and PA also uses involuntary retirements. • Most entities (CA, FL, GA, ILL, MontCo, OH, PA, WA) use probationary periods. Length of probationary periods range from 6 to 18 months. • WA is currently updating its rules on adverse actions to reflect recent civil service reforms.
Basic Process	<ul style="list-style-type: none"> • Advance Notice • Reply Opportunity • Representation Right • Decision • Timeframes • Cause (Performance, Conduct, National Security, Other) • Should representation be limited to internal agency or union staff or should it include outside legal counsel? • At what level should the decision be made (2nd level supervisor, agency HQ panel, or other)? • What information must be contained in or provided with any decision notice? • After notice is provided and a response received, should there be a maximum time for issuance of the decision? • If a separate process for poor performance is established, what 	<ul style="list-style-type: none"> • Due process entitlements vary from entity to entity. However, generally advance notice is provided ranging from 1 (PA) workday to 15 workdays (CA). Many entities specified a right to respond to the notice but fewer noted a right to representation (CA, NJ.) • There were no dominant practices with respect to centralization/decentralization of decision-making; right of appeal; and use of different procedure for handling performance problems. However, use of a PIP was mentioned by 2 entities (MontCo and MWAA.) • 4 entities (Alex, GA, ILL, OH) identified the application of progressive discipline. • GA, NJ and PA specified certain situations such as emergencies where immediate action could be taken. • ADR (mediation) was specifically mentioned as a supplemental avenue by 3 entities (Alex, MWAA, TX). • Unique practices - <ul style="list-style-type: none"> ○ GA uses positive discipline approach in which discipline is taken only if employee exhibits no positive change. Offending employee is provided an oral reminder, followed by a written reminder, and then a 1-day suspension. On that day, employee must decide to solve the problem and commit to fully acceptable performance or to quit. If employee fails to keep the commitment, termination results. ○ MontCo offers a pre-settlement disciplinary conference option. The option provides for a 3-member panel (comprised of representatives from union, management and HR) which informally hears case presentation from the parties. The panel makes a recommendation to the deciding official who can accept or reject it. Recommendations are typically rendered the same day the case is presented. About 75% of disciplinary cases are resolved using this option and approximately 80-90% of employees still

Adverse Actions System Elements		Researched Approaches
	<p>unique elements should it have:</p> <ul style="list-style-type: none"> - Opportunity to improve? - Action based on formal appraisal? - Limit the period of performance on which action may be based? • Should DHS be covered by 5 USC 7532 (actions based on national security)? <ul style="list-style-type: none"> - If not, should the normal process be modified to provide for an expedited process when national security concerns are implicated? 	<p>receive some type of discipline.</p> <ul style="list-style-type: none"> • NY requires that charges of misconduct or incompetence be brought within 18 months of the act (1 year if the employee is managerial or confidential) unless the charge would constitute a crime if proved in a court. • NY, PA, and WA do post-decision notices of suspensions. • Ohio requires probationary periods for promotions. • ILL and WA provides for hearings prior to proposed effective date of action. • WA requires removal of supervisors who tolerate continued employment of employees whose performance warrant termination.
Evaluation	<ul style="list-style-type: none"> • How is success of the adverse action system evaluated? 	<ul style="list-style-type: none"> • GA, Texas and WA identified formal mechanisms for program evaluation.

LITERATURE REVIEW

Information on adverse actions outside the Federal sector is sparse. Our key findings on directly and indirectly related information follow.

Adverse Actions

- Some organizations use a “discipline without punishment” approach that replaces punitive disciplinary policies. It is an affirmative program that makes problem employees take personal responsibility for their actions, and includes a Peer Review process.

Miscellaneous

Supervisors and Managers:

- Employee relations issues can be minimized by using management development strategies, i.e., managerial/supervisory skills, awareness, training, communication, tools, and course corrections. These strategies include early intervention when an employee’s behavior is unacceptable and awareness of common misperceptions on dealing with poor-performing employees.

Current Federal System:

- In 1999, MSPB considered streamlining the current multi-level, multi-agency process; considered changing reduction-in-force laws; and considered repealing performance-related removal provisions in civil service law.

Employment at Will:

- Impartial arbitrators find many “at will” terminations are unjust. In some states, there are judicial exceptions to and limitations on the employment-at-will doctrine including public-policy, implied-contract, and covenant-of-good-faith exceptions and common-law limitations. ACLU believes legislation requiring “just cause” for firing is needed, and the Uniform State Law Commissioners have proposed a “just cause” standard.

Other Countries:

- Privatization of public sector organizations and services is impacting on industrial relations in Western Europe, including employment levels and status, pay and conditions, bargaining arrangements, employer and employee representation, and industrial relations systems in general.

Master Summary – Appeals Approaches Used in Researched Systems

Appeals System Elements		Researched Approaches
Coverage	<ul style="list-style-type: none"> • Employees • Actions • Trial/Probationary Periods 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Appeals are limited to permanent, certified, classified, or preference eligible employees (MI, CA, FL, GA, WI, OH, SC, IL, GAO, Architect of the Capital, NSA, DIA & NIMA). • Very few appeals systems allow appeals for probationary employees (PA, NY, NJ, WA & NGB). • Employees may appeal adverse actions or major disciplinary actions, to include removals, dismissals, and suspensions (MI, CA, FL, GA, WI, OH, SC, IL, NJ, NY, GAO, Architect of the Capital, Office of Compliance, Congressional Accountability, Customs, ATF & DEA). • Few appeals systems allow appeals for minor discipline (CA, NJ & Architect of the Capital). <p>Key Expert Opinions</p> <ul style="list-style-type: none"> • None
Reviewer	<ul style="list-style-type: none"> • Composition • Authority 	<p>Key Research Findings</p> <p>Appeals systems are composed of two, three, or five member boards or commissions (CA, PA, FL, GA, WI, OH, SC, NJ, NY, IL & WA).</p> <p>In Wisconsin, the appeals board may appoint an arbitrator to conduct a hearing and make a final binding decision.</p> <p>Most federal agencies use MSPB to hear appealable matters, very few use an internal appeals process and/or an internal appeals board (GAO (internal board), Office of Compliance, Congressional Accountability (internal board), Architect of the Capitol, Library of Congress (use of external hearing officers), TVA, NGB, NIMA & DIA).</p> <p>Key Expert Findings</p> <p><u>Broida</u></p> <p>Establish a corps of Administrative Judge's (AJ's) to administer a system that is simple enough for employees to present case without an attorney.</p> <p>Panel of attorney-examiner AJ's could initially draw from MSPB and EEOC on a reimbursable basis.</p> <p>After break-in period, DHS would permanently appoint AJ's that are highly-skilled in substantive MSPB and EEOC case law and have considerable experience in adjudicating appeals and writing decisions of procedural and substantive complexity.</p> <p>AJ's would have jurisdiction to hear appeals on any adverse personnel action, such as performance appraisal, workplace complaints, reprimands, up to terminations.</p> <p>Consider a working agreement with EEOC where DHS judges could hear and adjudicate EEO claims.</p> <p>Format of hearing would be inquisitorial rather than adversarial; AJ would be a fact finder and an adjudicator.</p> <p>Role of representatives would be to assist AJ in identifying information to be developed.</p> <p><u>Nesterczuk</u></p>

Appeals System Elements		Researched Approaches
		<p>Consider a single, one-stop internal review process; this will discourage forum-shopping and snowballing of an issue.</p> <p>Does not have to preclude later appeals to external agencies.</p> <p>Establish ADR/peer review process before positions harden; strong proponent of resolving disputes voluntarily before you involve lawyers and litigation.</p> <p>Peer panel could be empowered to overturn a management decision – process must be voluntary on both ends.</p> <p><u>Swerdzewski</u></p> <p>Tri-partite panels do not work for discipline; it elongates the process.</p> <p>Two advocates try to influence neutral; neutral is perceived as favoring one side after decision.</p> <p>There's much to be said for appeal bodies that are dispassionate; fewer emotional decisions.</p>
Review Process	<ul style="list-style-type: none"> • Components • Timeframes 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Administrative Law Judges, board members, hearing officers/examiners or staff attorneys, are responsible for conducting hearings. They make a report and/or recommendation to the board, commission, or deciding official (CA, PA, FL, IL, OH, WI, PA & WA). • A few states allow for appeals on the record only. A report and recommendation is made to the board, commission, or deciding official, based upon the findings in the record (NY, NJ & PA). • The board, commission or deciding official makes a decision based upon the report and recommendation of the individual conducting the hearing or reviewing in the record (CA, PA, FL, IL, OH, WI, PA, WA, NY, NJ & PA). • Timeframes for filing appeals range from 10 days (OH, SC, & GA) to 30 days (WI, WA, CA & GAO). The timeframe for NGB employees is 20 days and for NIMA it is 15 days. • Formal dispute resolution allows for resolution of complaints prior to a hearing (Office of Congressional, Compliance Accountability, GAO, SC, MI, FL, GA & WA). • In Wisconsin, the appeals board reserves the right to have an arbitrator conduct a hearing and make a final binding decision (WI). <p>Key Expert Findings</p> <p><u>Broida</u></p> <ul style="list-style-type: none"> • No discovery; direct request for development of information to AJ. • Reps would argue positions at hearings but not in the traditional sense; the AJ would define the areas of controversy and, within those areas, take evidence. • AJ would be required to issue a decision no later than 60 days from the filing of appeal; bench decisions would be permitted.

Appeals System Elements		Researched Approaches
Decision	<ul style="list-style-type: none"> • Precedential or Not • Burden of Proof • Standard of Proof • Judicial Review 	<p>Key Research Findings</p> <ul style="list-style-type: none"> • Precedent is loosely applied or not applied (MI, CA, GA, WA, OH, WI, NY, MontCo., MD, DIA, NGB & CG NAF). <p>The employer has the burden of proof (MI, CA, PA, FL, GA, WI, OH, SC, NJ, IL, WA, City of Alexandria, VA & GAO).</p> <p>Standard of Proof is preponderance of the evidence (MI, CA, PA, FL, GA, WI, OH, SC, NY, IL, WA, City of Alexandria, VA, GAO (performance-based actions are excluded), NGB & CG NAF).</p> <p>Standard of Proof is substantial evidence (Architect of the Capital, GAO (performance-based actions) & NY).</p> <p>Appellants may appeal to the courts (MI, CA, GA, PA, FL, WA, SC, OH, IL, NJ, WI, FRB, TVA (TVA court only), GAO, Office of Compliance, Congressional Accountability & FRB).</p> <p>Appellants may not appeal to the courts (NIMA, CG NAF (arbitrator decisions are final) & NGB).</p> <p>NY has a limited judicial review for judicial or constitutional questions.</p> <p>Key Expert Findings</p> <p><u>Broida</u></p> <ul style="list-style-type: none"> • AJ's decisions should be guided, but not controlled, by precedent from MSPB, EEOC, FLRA, etc. but only appealable within DHS. • AJ's decisions should be appealable to a three-member appellate panel which would, in time, develop a specialized body of law and precedent that would conform preexisting case law to particular needs of DHS. • Appellate panel would consist of DHS employees with one member appointed by DHS unions, one from management, and one chosen jointly. • Panel would be required to decide within 60 days from the filing of an appeal. • No interim relief when an AJ's decision is appealed by the agency.
Other Appeals Systems	<ul style="list-style-type: none"> • Discrimination • Prohibited personnel Practices (including whistleblower reprisal) 	<p>Key Findings</p> <ul style="list-style-type: none"> • There are two or more forums for discrimination claims (CA, WI, IL, MI, PA, City of Alexandria, GAO, Architect of the Capital, Library of Congress, NSA, DIA, NIMA & NGB). • There is a separate forum for discrimination claims (NY, SC, OH, FL, GA, WA & NGB). • Whistleblower claims can be heard as an underlying defense to disciplinary actions (NY). <p>Key Expert Findings</p> <ul style="list-style-type: none"> • None

LITERATURE REVIEW

Key Findings

Articles were generally positive on the establishment of appeal boards made up of employees to review a variety of employment disputes and adverse actions.

- Employee Appeal Boards (EAB) or “Peer Review” boards can be designed to cover a range of issues from the appeal of formal disciplinary actions to management decisions believed to have “negatively impacted the appealing employee.”^{1, 2}
- Employees would normally follow a “two-step” process to discuss the issue with first and second-level supervisors prior to requesting a hearing with an EAB.^{1, 2}
- One way to compose a five-member EAB is as follows: the executive in the employee’s management chain; a representative from the HR Department; two members selected by the appealing employee from an established list of volunteers trained in the peer review process; and one member selected at random from the established list of volunteers.¹
- Appeals are decided on a simple majority vote. The EAB can sustain, modify, or reject the initial decision. Board decisions are final and cannot be appealed further within the organization.¹
- Benefits of the EAB or Peer Review boards include the establishment of an effective problem solving process accepted by employees as fair and equitable; and the reduction in the number of outside charges (EEOC, NLRB, litigation, etc.).²

Alternative Dispute Resolution

Articles generally stressed the advantages of establishing alternative dispute resolution processes in organizations.

- Depending on what type of process is considered the “formal” dispute resolution process within an organization, Alternative Dispute Resolution (ADR) can take several forms including: Arbitration, Peer Review, and Mediation.^{3, 4}
- The advantages of implementing ADR programs include quicker complaint resolution at earlier stages in the process.^{3, 4}
- The Air Force (which established its ADR Program in 1993) defines ADR as “the voluntary use of a neutral third party to arrive at a mutually acceptable resolution of disputes.”³
- Critical Success Factors in implementing an ADR program focused on mediation: the use of mediation is voluntary; the mediation process is thoroughly described; the process is confidential and impartial; the mediation process is not a court proceeding, so normal court rules do not apply; mediators are not judges and do not provide legal counsel or advice; and the goal of a mediation session should be for the parties to come to an agreement that is binding.³
- Conclusions for what makes a successful mediator can be drawn from the four-week training program for new mediators with the Federal Mediation and Conciliation Service: perceived neutrality is critical; comprehensive training is needed for mediators; substantive knowledge and process knowledge is necessary; mediators learn by doing; mediation is both reflection and action on behalf of the mediator.⁵

1. *Employee Appeal Board, Sieber, September 1997; reviewed August 2002.*
2. *Peer Review, Caras, 2002.*
3. *An Award Winning ADR Program, Cavanaugh, Summer 2000.*
4. *Developing an Alternative Dispute Resolution Program, Gamlem and Sommer, October 1997; reviewed August 2002.*
5. *Mastering the Art of Dispute Resolution: The Best Practices from the FMCS, Mareschal, 2002.*